

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
 ) Case No. 1:18-CR-00167  
 ) (RJA) (HKS)  
 )  
 Plaintiff, )  
 )  
 vs. ) August 8th, 2019  
 )  
 BENJAMIN ASHER HANDLEY, )  
 )  
 )  
 Defendant. )

TRANSCRIPT OF PLEA  
BEFORE THE HONORABLE RICHARD J. ARCARA  
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: JAMES P. KENNEDY, JR., ESQ.  
UNITED STATES ATTORNEY  
BY: WEI XIANG, ESQ.  
ASSISTANT UNITED STATES ATTORNEY  
138 Delaware Avenue  
Buffalo, NY 14202

For the Defendant: FEDERAL PUBLIC DEFENDERS OFFICE  
BY: MARY BETH COVERT, ESQ.  
300 Pearl Street, Suite 200  
Buffalo, NY 14202

Court Reporter: MEGAN E. PELKA, RPR  
Robert H. Jackson Courthouse  
2 Niagara Square  
Buffalo, NY 14202

08:55AM 1 THE CLERK: Criminal action 2018-167A. United States  
08:55AM 2 vs. Benjamin Asher Handley. Plea. Counsel, please state your  
08:55AM 3 name and the party you represent for the record.

08:55AM 4 MR. XIANG: Good morning, Your Honor. Wei Xiang for  
08:55AM 5 the government.

08:55AM 6 MS. COVERT: Good morning, Your Honor. Mary Beth  
08:55AM 7 Covert for Benjamin Asher Handley and he's present here,  
08:55AM 8 Judge, today.

08:55AM 9 THE COURT: Good morning.

08:55AM 10 MR. XIANG: Judge, we have a written plea agreement  
08:55AM 11 to Count 3 of the indictment. I have signed it. I don't know  
08:55AM 12 if the defense has it or has passed it up.

08:55AM 13 MS. COVERT: Oh, I'm sorry, Judge. We had already  
08:56AM 14 signed it. It's right here.

08:56AM 15 THE COURT: That's your understanding, Ms. Covert?

08:56AM 16 MS. COVERT: Yes, Your Honor.

08:56AM 17 THE COURT: Would you administer the oath to  
08:56AM 18 Mr. Handley?

08:56AM 19 (The defendant was sworn at 8:56 a.m.)

08:56AM 20 THE COURT: Sir, you are now under oath. And being  
08:56AM 21 under oath during the course of these proceedings, I'll be  
08:56AM 22 asking you some questions. You'll have to answer those  
08:56AM 23 questions honestly and truthfully. If you were to give me any  
08:56AM 24 false answer, that false answer may be used against you in a  
08:56AM 25 further prosecution brought by the government on a charge of

08:56AM 1 perjury or making a false statement while under oath. Do you  
08:56AM 2 understand that, sir?

08:56AM 3 THE DEFENDANT: Yes, Your Honor.

08:56AM 4 THE COURT: It is also very important that you  
08:56AM 5 understand what your rights are. If at any time during the  
08:56AM 6 course of these proceedings there's something you don't  
08:56AM 7 understand, you want to ask me a question, you want to consult  
08:56AM 8 with your attorney, you want something more fully explained to  
08:56AM 9 you, you're free to do so. You're encouraged to do so. It's  
08:57AM 10 not important that we get this over with as quickly as  
08:57AM 11 possible. What's important is that I'm satisfied that you  
08:57AM 12 fully understand what your rights are. Do you understand  
08:57AM 13 that?

08:57AM 14 THE DEFENDANT: Yes, Your Honor.

08:57AM 15 THE COURT: Now, it is my understanding you're here  
08:57AM 16 today to waive certain rights and to plead guilty to Count 3  
08:57AM 17 of the indictment under the terms and conditions of the plea  
08:57AM 18 agreement. Do you understand this charge?

08:57AM 19 THE DEFENDANT: Yes, I do.

08:57AM 20 THE COURT: Ms. Covert, you have gone over Count 3  
08:57AM 21 with your client. Are you satisfied he understands it?

08:57AM 22 MS. COVERT: Yes, Your Honor.

08:57AM 23 THE COURT: Any reason that we need to go through any  
08:57AM 24 further explanation?

08:57AM 25 MS. COVERT: No, Your Honor.

08:57AM 1 THE COURT: And you have reviewed with him the terms  
08:57AM 2 and conditions of the plea agreement and he understands them?

08:57AM 3 MS. COVERT: Yes, Judge.

08:57AM 4 THE COURT: And you explained to him his rights under  
08:57AM 5 Rule 11, right to a trial, right to a jury trial, right to an  
08:57AM 6 attorney, et cetera?

08:57AM 7 MS. COVERT: Yes, Your Honor.

08:57AM 8 THE COURT: Now, sir, you have discussed this whole  
08:57AM 9 matter with your attorney. She's explained to you what your  
08:57AM 10 legal rights are, what your legal options are. You probably  
08:57AM 11 didn't like to hear what she had to tell you, but she's not  
08:57AM 12 here to make you feel good. She's here to be your attorney.

08:57AM 13 And apparently, based on those discussions, you're  
08:57AM 14 here to waive certain rights and to plead guilty to Count 3,  
08:57AM 15 under the terms and conditions of the plea agreement. Are you  
08:58AM 16 fully satisfied with the advice and counsel you received from  
08:58AM 17 your lawyer in this matter?

08:58AM 18 THE DEFENDANT: Yes, Your Honor.

08:58AM 19 THE COURT: Any complaints?

08:58AM 20 THE DEFENDANT: No complaints.

08:58AM 21 THE COURT: All right. Let's proceed with the plea  
08:58AM 22 agreement.

08:58AM 23 MR. XIANG: The defendant, Benjamin Asher Handley and  
08:58AM 24 the United States Attorney for the Western District of  
08:58AM 25 New York, hereinafter the government, hereby enter into a plea

08:58AM 1 agreement with the terms and conditions as set out below.

08:58AM 2           The defendant agrees to plead guilty to Count 3 of  
08:58AM 3 the indictment, which charges a violation of Title 26,  
08:58AM 4 United States Code, Section 5861(j), unlawful transport of a  
08:58AM 5 firearm, for which the maximum possible sentence is a term of  
08:58AM 6 imprisonment of 10 years, a fine of \$250,000, a mandatory \$100  
08:58AM 7 special assessment and a term of supervised release of three  
08:58AM 8 years. The defendant understands that the penalties set forth  
08:58AM 9 in this paragraph are the maximum penalties that can be  
08:58AM 10 imposed by the Court at sentencing.

08:58AM 11           THE COURT: Do you understand that, sir?

08:58AM 12           THE DEFENDANT: Yes, Your Honor.

08:58AM 13           THE COURT: Did you explain to him the importance of  
08:59AM 14 this paragraph?

08:59AM 15           MS. COVERT: Yes, Your Honor. I have.

08:59AM 16           THE COURT: What is the importance of the paragraph?

08:59AM 17           MR. XIANG: This paragraph satisfies the requirements  
08:59AM 18 of Rule 11 of the Federal Rules of Criminal Procedure by  
08:59AM 19 notifying the defendant of the maximum penalty. The Court  
08:59AM 20 also must consider, but is not bound by, the Federal  
08:59AM 21 Sentencing Guidelines.

08:59AM 22           The sentencing guidelines went into effect on  
08:59AM 23 November 1st, 1987 and are relevant to federal offenses  
08:59AM 24 committed after that date. The purpose of the sentencing  
08:59AM 25 guidelines is to establish a sentencing system in which Courts

1 will impose similar sentences for similar crimes upon  
2 defendants who are similar in ways that, according to the  
3 guidelines, are relevant to sentencing. If the sentencing  
4 guidelines procedure is followed, the Court would impose a  
5 sentence within a range on a sentencing table in the  
6 sentencing guidelines manual. This range would depend on the  
7 defendant's criminal conduct and the defendant's criminal  
8 history.

9 The law requires the Court to consider imposing the  
10 sentence in accordance with the sentencing guidelines  
11 procedure. The law permits the Court, however, to impose a  
12 reasonable sentence without adhering to the sentencing  
13 guidelines. If the Court decides to impose a sentence other  
14 than the one prescribed by the sentencing guidelines, the  
15 Court must state its reasons for doing so.

16 THE COURT: Do you understand that, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: We're going to go through the guidelines  
19 in a few minutes. And I know your lawyer has spent a lot of  
20 time explaining them to you. If you have any questions, let  
21 me know. Otherwise, I'll assume you understand it, okay?

22 THE DEFENDANT: Understood.

23 THE COURT: All right.

24 MR. XIANG: The defendant understands that if it's  
25 determined that the defendant has violated any of the terms or

1 conditions of supervised release, the defendant may be  
2 required to serve in prison all or part of the term of  
3 supervised release up to two years, without credit for time  
4 previously served on supervised release.

5 As a consequence, in the event the defendant is  
6 sentenced to the maximum term of incarceration, a prison term  
7 imposed for a violation of supervised release may result in  
8 the defendant serving a sentence of imprisonment longer than  
9 the statutory maximum set forth in paragraph 1 of this  
10 agreement.

11 THE COURT: Do you understand that, sir?

12 THE DEFENDANT: Yes, Your Honor.

13 MR. XIANG: The defendant understands the nature of  
14 the offense set forth in paragraph 1 of this agreement and  
15 understands that if this case proceeded to trial, the  
16 government would be required to prove beyond a reasonable  
17 doubt the following elements of the crime: That the defendant  
18 knowingly transported or delivered a firearm in interstate  
19 commerce. This firearm was a machine gun. The defendant knew  
20 the characteristic of this firearm, that is, that it was a  
21 machine gun. And this firearm was not registered, as  
22 required, in the National Firearms Registration and Transfer  
23 Record.

24 THE COURT: Do you understand that, sir?

25 THE DEFENDANT: Yes, Your Honor.

09:01AM 1 THE COURT: Okay.

09:01AM 2 MR. XIANG: The defendant and the government agree to  
09:01AM 3 the following facts which form the basis for the entry of the  
09:01AM 4 plea, including relevant conduct.

09:01AM 5 On or about January 18th, 2018, the defendant,  
09:01AM 6 Benjamin Asher Handley, using the email handle Abraham\_4.69,  
09:02AM 7 sent an email to an undercover agent of the U.S. Department of  
09:02AM 8 Homeland Security, Homeland Security Investigations, referred  
09:02AM 9 to as an UCA. The defendant offered to sell fully automatic  
09:02AM 10 pistols to the UCA. After some negotiation, the UCA agreed to  
09:02AM 11 buy an automatic Glock 17 pistol from the defendant for \$1,000  
09:02AM 12 in cash.

09:02AM 13 On or about February 6th, 2018, the UCA told the  
09:02AM 14 defendant, "I think I have a U.K. buyer for that Glock. I  
09:02AM 15 told him it might be two to three weeks. Think that timeline  
09:02AM 16 is realistic?" In the following weeks, the defendant shipped  
09:02AM 17 three parcels from the State of Alaska to an address provided  
09:02AM 18 by the UCA in the Western District of New York. Split among  
09:02AM 19 the parcels were all the parts for a Glock 17 pistol with  
09:02AM 20 obliterated serial numbers and an additional modified back  
09:02AM 21 plate.

09:03AM 22 The defendant emailed the UCA with instructions on  
09:03AM 23 assembling the modified back plate. Assembling the Glock  
09:03AM 24 yielded a fully automatic pistol. The defendant subsequently  
09:03AM 25 sold an additional 11 full automatic firearms with obliterated



1 serial numbers to the UCA, all shipped from the State of  
2 Alaska for the Western District of New York. None of these 12  
3 firearms was registered, as required by Title 26, United  
4 States Code, Section 5841 and the National Firearms  
5 Registration and Transfer Record.

6 THE COURT: How would you prove all that?

7 MR. XIANG: Judge, we'll have five sets of evidence.  
8 Since this was mainly a circumstantial evidence case, first  
9 we'll have law enforcement agents. They will testify to and  
10 admit the emails that were exchanged here, mailings, both the  
11 firearms and the photographs of the cash that was mailed to  
12 the defendant, as well as a mailing by the defendant on one of  
13 the transactions where he sent out a personal mail, along with  
14 one of the gun packages, which revealed his real address.

15 Agents would also testify to test-firing they  
16 conducted of some of these firearms, that they were, in fact,  
17 automatic. And then they also would testify to surveillance  
18 they conducted on him on at least one of the transactions  
19 where they followed him all the way from Homer to Anchorage  
20 and into a post office where he dropped off the last parcel of  
21 firearms that he was sending to us.

22 Next, we'll have experts. They would testify to DNA  
23 from some of these firearms. On one of the Glocks, there was  
24 a match of the DNA on the firearm to the defendant by a  
25 statistic of 59.6 quadrillion.

09:05AM 1 Third, we have cell phone location evidence. There's  
09:05AM 2 historical cell site data that matched up the defendant's cell  
09:05AM 3 phone to locations by post offices where some of these firearm  
09:05AM 4 parcels were dropped off for mailing. And that's across  
09:05AM 5 the -- a large portion of the State of Alaska. And we also  
09:05AM 6 have ping records that also match them to some of the  
09:05AM 7 transactions.

09:05AM 8 Fourth, we have sales records from licensed federal  
09:05AM 9 firearm dealers of the same types of firearms that the  
09:05AM 10 defendant sold to us he had purchased. And they were shipped  
09:05AM 11 to him by these FFLs and he had scrubbed the serial numbers so  
09:05AM 12 it's -- can't be certain, but it's another circumstance in  
09:05AM 13 terms of timeline and the type of firearms that he had in his  
09:05AM 14 possession.

09:06AM 15 And fifth, after his arrest in the State of Alaska,  
09:06AM 16 there was a search warrant that was obtained there and  
09:06AM 17 executed on his laptop that he had on his person. And on that  
09:06AM 18 laptop there was a file that contained an email address and  
09:06AM 19 the password for the emails that had been corresponding with  
09:06AM 20 us, which I noted is the Abraham\_4.69 email address.

09:06AM 21 THE COURT: What caliber were these? Was the guns?

09:06AM 22 MR. XIANG: Judge, these were -- there was mostly  
09:06AM 23 9-millimeters. There was a .45 caliber. That was in the  
09:06AM 24 second transaction, but most of these were 9-millimeters.

09:06AM 25 THE COURT: All right. Do you understand all that,

09:06AM 1 sir?

09:06AM 2 THE DEFENDANT: Yes, Your Honor.

09:06AM 3 THE COURT: Okay.

09:06AM 4 MR. XIANG: The defendant understands that the Court  
09:07AM 5 must consider, but is not bound by the sentencing guidelines  
09:07AM 6 of the Sentencing Reform Act of 1984. The government and the  
09:07AM 7 defendant agree that Guideline Section 2K2.1(a)(5) applies to  
09:07AM 8 the offense of conviction and provides for a base offense  
09:07AM 9 level of 18.

09:07AM 10 THE COURT: Do you understand where that number came  
09:07AM 11 from, sir?

09:07AM 12 THE DEFENDANT: Yes, Your Honor. I understand.

09:07AM 13 THE COURT: You explained it to him? You saw this  
09:07AM 14 table with all these numbers on it?

09:07AM 15 THE DEFENDANT: (The defendant nodded head.)

09:07AM 16 THE COURT: It's important. You're going to end up  
09:07AM 17 somewhere on this chart. Where you end up, that's a range of  
09:07AM 18 months being recommended to the Court as to what the sentence  
09:07AM 19 should be. I'm not bound by it, but you want to be as high up  
09:07AM 20 to the top of this table as you can and far away from the  
09:07AM 21 bottom because as you go down that page, the numbers get  
09:07AM 22 pretty high.

09:07AM 23 Now, for this particular violation, it's been  
09:07AM 24 determined, as a starting point, that the number is number 18.  
09:07AM 25 That means right about here on the chart. Okay? Right about

1 the middle of the page. Now, we're going to make some  
2 adjustments to fit your situation because every situation is  
3 different. Sometimes you may go up, sometimes you may go  
4 down. So, we're going to go through that in a few minutes,  
5 but it's going to fit your situation, under these facts and  
6 circumstances. If you have any questions, you let me know,  
7 all right?

8 THE DEFENDANT: Yes, sir.

9 MR. XIANG: The government and the defendant agree  
10 that the following specific offense characteristics do apply;  
11 the four-level increase, pursuant to Guideline Section  
12 2K2.1(b)(1)(B), the offense involved 8 to 24 firearms.

13 THE COURT: Do you understand that, sir?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Because there's so many -- the  
16 number goes up four levels, which works to your disadvantage,  
17 obviously.

18 MR. XIANG: The four-level increase, pursuant to  
19 Guideline Section 2K2.1(b)(4)(B), the firearms had obliterated  
20 serial numbers and the four-level increase, pursuant to  
21 Guideline Section 2K2.1(b)(5), the trafficking of firearms.  
22 The government maintains that the following specific offense  
23 conduct does apply; the four-level increase pursuant to  
24 Guideline Section 2K2.1(b)(6)(A), transfer with reason to  
25 believe firearms would transported out of the United States.

09:09AM 1 The defendant specifically reserves the right at the time of  
09:09AM 2 sentencing to argue to the Court that this increase does not  
09:09AM 3 apply.

09:09AM 4 THE COURT: That would go from 34 to 31?

09:09AM 5 MS. COVERT: Thirty.

09:09AM 6 MR. XIANG: Thirty. It's a four-level difference,  
09:09AM 7 Judge.

09:09AM 8 THE COURT: All right. We're talking about -- this  
09:09AM 9 is a different -- this is not under B and C. This is a  
09:09AM 10 different section, right, of 7B and C? This is  
09:10AM 11 2K2.1(b) (6) (A)?

09:10AM 12 MR. XIANG: Correct. So, this is in paragraph 8  
09:10AM 13 here.

09:10AM 14 THE COURT: Yeah. This has nothing to do with  
09:10AM 15 paragraph 7A and B.

09:10AM 16 MR. XIANG: Correct.

09:10AM 17 THE COURT: This is a difference.

09:10AM 18 MR. XIANG: Correct.

09:10AM 19 THE COURT: All right. Go ahead.

09:10AM 20 MR. XIANG: And so, based on the foregoing, it is the  
09:10AM 21 understanding of the government and the defendant that the  
09:10AM 22 adjusted offense level for the offense of conviction is 34, if  
09:10AM 23 the government's calculations apply and 30 if the defendant's  
09:10AM 24 calculations apply.

09:10AM 25 THE COURT: What evidence do you have that it would

1 be transported out of the United States?

2 MR. XIANG: Judge, back in the factual basis,  
3 paragraph 4B, before the defendant sent the gun, the Glock  
4 that's the subject of this charge, Count 3, the UCA -- the  
5 undercover agent had told them, I think I have a U.K. buyer  
6 for that Glock. So, he had told them that the Glock that the  
7 undercover agent -- that the defendant was sending to the  
8 undercover agent, the undercover agent was planning on sending  
9 to someone else in the United Kingdom.

10 So, that, the government believes, establishes at  
11 least by a preponderance of the evidence that the defendant  
12 sent his Glock to the undercover agent with reason to believe  
13 that the Glock would be then sent out of the United States to  
14 the U.K.

15 THE COURT: So, that was within the control of the  
16 government?

17 MR. XIANG: Well, it was.

18 THE COURT: The government didn't have to say that,  
19 but they said it.

20 MR. XIANG: Correct. And he sent it anyway.

21 THE COURT: Why did the government say that, so they  
22 could get a four-level increase?

23 MR. XIANG: No, Judge. I'm not quite certain why  
24 that was said at the time. I don't recall at this point.

25 THE COURT: Sounds like a little manipulation to me,

09:11AM 1 because the agent said I got someone outside of the United  
09:11AM 2 States? It doesn't sound like a very good argument to me.

09:11AM 3 Sounds like manipulation. It's a four-level increase. That's  
09:11AM 4 is a substantial increase. If the government didn't say that,  
09:12AM 5 just I have a buyer, it would have been -- we wouldn't have  
09:12AM 6 had it. Do you agree or not agree with that?

09:12AM 7 MR. XIANG: Right. If we didn't say it.

09:12AM 8 THE COURT: So, he said it. So, it goes up four  
09:12AM 9 levels?

09:12AM 10 MR. XIANG: Well, he sent it to us anyway. He didn't  
09:12AM 11 have to send it. He could have said, oh, if you're exporting  
09:12AM 12 it, no. I'm only selling intrastate or I'm only letting you  
09:12AM 13 keep it in state. You're telling me you're sending it to  
09:12AM 14 another out of the country, I'm not going to sell it to you.  
09:12AM 15 That may have worked with somebody else.

09:12AM 16 THE COURT: In the real world, did it make any  
09:12AM 17 difference?

09:12AM 18 MR. XIANG: I guess it depends on his morals, but --

09:12AM 19 THE COURT: Why would a defendant care whether it's  
09:12AM 20 going to go to England or go to somebody in Texas? That's all  
09:12AM 21 he wants is the money, I guess.

09:12AM 22 MR. XIANG: The Second Amendment -- you know, we  
09:12AM 23 don't know at the time when his reason was.

09:12AM 24 THE COURT: Well, we'll wait for the probation  
09:12AM 25 officer. And your argument is probably consistent with what

09:12AM 1 I'm saying?

09:12AM 2 MS. COVERT: Yes, Judge. You hit right on it. And I  
09:12AM 3 will say that Mr. Handley didn't react to the email and say,  
09:13AM 4 oh, good, I've been looking for an international buyer for  
09:13AM 5 guns. He didn't say anything in response to that email and  
09:13AM 6 wasn't seeking out international buyers.

09:13AM 7 The other thing, Judge, is there is some case law  
09:13AM 8 that supports the notion that if the government is using that  
09:13AM 9 kind of a comment for the sole purpose of getting an increase  
09:13AM 10 under the guidelines, then it's not appropriate to apply it.  
09:13AM 11 And so, that's what we would be arguing.

09:13AM 12 THE COURT: Well, 31 has a 108 to 135 range.

09:13AM 13 MS. COVERT: Correct.

09:13AM 14 THE COURT: And 34 has a 151 to 188. So, the  
09:13AM 15 difference is a possible sentence of maybe 80 months, which is  
09:13AM 16 an additional seven years because of what the agent said.

09:13AM 17 MS. COVERT: It's a big swing.

09:14AM 18 THE COURT: Well, we'll wait and see what the  
09:14AM 19 probation officer says and what the justification is. It  
09:14AM 20 better be better than what I heard today. Okay.

09:14AM 21 MR. XIANG: So, at sentencing, the government agrees  
09:14AM 22 not to oppose the recommendation that the Court apply the two-  
09:14AM 23 level downward adjustment of Guideline Section 3E1.1(a),  
09:14AM 24 acceptance of responsibility and further agrees to move the  
09:14AM 25 Court to apply the additional one-level downward adjustment of



1 Guideline Section 3E1.1(b), which would result in a total  
2 offense level of 31 if the government's calculations apply and  
3 27 if the defendant's calculations apply.

4 It is the understanding of the government and the  
5 defendant that the defendant's criminal history category is I.  
6 The defendant understands that if the defendant is sentenced  
7 for or convicted of any other charges prior to sentencing in  
8 this action, the defendant's criminal history category may  
9 increase. The defendant understands that the defendant has no  
10 right to withdraw the plea of guilty based on the Court's  
11 determination of the defendant's criminal history category.

12 THE COURT: Now, the acceptance of responsibility  
13 provision is there, if somebody is guilty and willing to  
14 accept responsibility -- and by pleading guilty it's evidence  
15 that you are -- you can get a three-level reduction, which is  
16 substantial, if you look at the low end of the lower number  
17 and the high end of the higher number.

18 The theory being, you save the government the time  
19 and expense of a trial, you should get the lower end of the  
20 sentence. There's no guarantee you'll get the lower end, but  
21 it gives you and your lawyer an argument to argue for a lower  
22 sentence. If you went to trial and you were convicted, in all  
23 likelihood, you would not get this three-level reduction. Do  
24 you understand that?

25 THE DEFENDANT: Yes, Your Honor.

MR. XIANG: It is the understanding of the government and the defendant that if the Court determines that Guideline Section 2K2.1(b) (6) (A) does apply, with a total offense level of 31 and criminal history category of I and taking into account the statutory maximum penalties, the defendant's sentencing range will be a term of imprisonment of 108 to 120 months, a fine of 30,000 to \$250,000 and a period of supervised release of one to three years.

It is the understanding of the government and the defendant that if the Court determines that Guideline Section 2K2.1(b) (6) (A) does not apply, with a total offense level of 27 and criminal history category of I, the defendant's sentencing range will be a term of imprisonment of 77 to 87 months, a fine of 20,000 to \$250,000 and a period of supervised release of one to three years. Notwithstanding this, the defendant understands that at sentencing, the defendant is subject to the maximum penalties set forth in paragraph 1 of this agreement.

THE COURT: Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

MR. XIANG: The government and the defendant agree to the correctness of the calculations of the sentencing guidelines range set forth above. The government and the defendant, however, reserve the right to recommend a sentence outside the sentencing guidelines range. This paragraph

1 reserves the right to the government and the defendant to  
2 bring to the attention of the Court all information deemed  
3 relevant to a determination of the proper sentence in this  
4 action. The defendant understands that the Court is not bound  
5 to accept any sentencing guidelines calculations set forth in  
6 this agreement and the defendant would not be entitled to  
7 withdraw the plea of guilty based on the sentence imposed by  
8 the Court.

9 THE COURT: Do you understand all this?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. XIANG: Judge, next is Statute of Limitations.

13 THE COURT: Any reason to read that?

14 MS. COVERT: No need.

15 THE COURT: And government's rights and reservations,  
16 any reason to read that?

17 MS. COVERT: No, Your Honor.

18 THE COURT: I guess you should read the removal.

19 MR. XIANG: The defendant represents that he is a  
20 citizen of the United States. However, if the defendant is  
21 not a citizen of the United States, the defendant understands  
22 that if convicted, the defendant may be removed from the  
23 United States, denied citizenship and denied admission to the  
24 United States in the future.

25 Appeal rights. The defendant understands that

09:17AM 1 Title 18, United States Code, Section 3742 affords the  
09:18AM 2 defendant a limited right to appeal the sentence imposed. The  
09:18AM 3 defendant, however, knowingly waives the right to appeal and  
09:18AM 4 collaterally attack any component of a sentence imposed by the  
09:18AM 5 Court which falls within or is less than the sentencing range  
09:18AM 6 for imprisonment, a fine and supervised release set forth in  
09:18AM 7 section 3 of paragraph 12A above, notwithstanding the manner  
09:18AM 8 in which the Court determines the sentence.

09:18AM 9 In the event of an appeal of the defendant's sentence  
09:18AM 10 by the government, the defendant reserves the right to argue  
09:18AM 11 the correctness of the defendant's sentence. The defendant  
09:18AM 12 understands that by agreeing not to collaterally attack the  
09:18AM 13 sentence, the defendant is waiving the right to challenge the  
09:18AM 14 sentence in the event that in the future the defendant becomes  
09:18AM 15 aware of previously unknown facts or a change in the law which  
09:18AM 16 the defendant believes would justify a decrease in the  
09:18AM 17 defendant's sentence.

09:18AM 18 The government waives its right to appeal any  
09:18AM 19 component of a sentence imposed by the Court which falls  
09:18AM 20 within or is greater than the sentencing range for  
09:18AM 21 imprisonment, a fine and supervised release set forth in  
09:19AM 22 section 3, paragraph 12B above, notwithstanding the manner in  
09:19AM 23 which the Court determines the sentence. However, in the  
09:19AM 24 event of an appeal of the defendant's sentence by the  
09:19AM 25 defendant, the government reserves its right to argue the

09:19AM 1 correctness of the defendant's sentence.

09:19AM 2           This plea agreement represents the total agreement  
09:19AM 3 between the defendant, Benjamin Asher Handley and the  
09:19AM 4 government. There are no promises made by anyone, other than  
09:19AM 5 those contained in this agreement. This agreement supersedes  
09:19AM 6 any other prior agreements, written or oral, entered into  
09:19AM 7 between the government and the defendant. It's signed by  
09:19AM 8 myself, dated today.

09:19AM 9           I, Benjamin Asher Handley, have read this agreement,  
09:19AM 10 which consists of pages 1 through 9. I have had a full  
09:19AM 11 opportunity to discuss this agreement with my attorney,  
09:19AM 12 Assistant Federal Public Defender Mary Beth Covert. I agree  
09:19AM 13 that it represents the total agreement reached between myself  
09:19AM 14 and the government. No promises or representations have been  
09:20AM 15 made to me, other than what is contained in this agreement. I  
09:20AM 16 understand all of the consequences of my plea of guilty. I  
09:20AM 17 fully agree with the contents of this agreement. I have  
09:20AM 18 signed this agreement voluntarily and of my own free will.  
09:20AM 19 Signed by the defendant and his counsel today.

09:20AM 20           THE COURT: Now, sir, we've gone over the agreement  
09:20AM 21 in court. You indicated you understand it. Your attorney  
09:20AM 22 says she's gone over it with you. She's satisfied you  
09:20AM 23 understand it. You signed it indicating you understand it.  
09:20AM 24 Any questions, sir?

09:20AM 25           THE DEFENDANT: No, Your Honor.

09:20AM 1 THE COURT: Are these all the terms and conditions of  
09:20AM 2 the plea agreement which we just read here in court?

09:20AM 3 THE DEFENDANT: I'm sorry? Could you --

09:20AM 4 THE COURT: Are these all the terms and conditions of  
09:20AM 5 the agreement?

09:20AM 6 THE DEFENDANT: Yes, Your Honor.

09:20AM 7 THE COURT: Has anyone made any other promises to  
09:20AM 8 you?

09:20AM 9 THE DEFENDANT: No other offers or promises.

09:20AM 10 THE COURT: How old are you, sir?

09:20AM 11 THE DEFENDANT: Twenty-six years old.

09:20AM 12 THE COURT: Where were you born and raised?

09:20AM 13 THE DEFENDANT: I was born in Soldotna, raised in  
09:20AM 14 Homer, Alaska.

09:20AM 15 THE COURT: Would you say that again?

09:20AM 16 THE DEFENDANT: I was raised in Homer, Alaska.  
09:20AM 17 H-O-M-E-R.

09:20AM 18 MS. COVERT: He was born in Alaska.

09:20AM 19 THE DEFENDANT: I was born there as well. Yes, Your  
09:20AM 20 Honor.

09:20AM 21 THE COURT: All right. What's the extent of your  
09:21AM 22 education?

09:21AM 23 THE DEFENDANT: Graduated high school, some college.

09:21AM 24 THE COURT: Where did you go to college?

09:21AM 25 THE DEFENDANT: At the Kenai Peninsula Campus,

09:21AM 1 pursuing a certificate in welding.

09:21AM 2 THE COURT: Why didn't you finish your college  
09:21AM 3 education?

09:21AM 4 THE DEFENDANT: I was only pursuing an education and  
09:21AM 5 training in welding for --

09:21AM 6 THE COURT: In what?

09:21AM 7 THE DEFENDANT: In commercial welding.

09:21AM 8 THE COURT: Whaling?

09:21AM 9 THE DEFENDANT: Welding. Industrial. Like iron  
09:21AM 10 working.

09:21AM 11 THE COURT: Welding?

09:21AM 12 THE DEFENDANT: Yes, sir.

09:21AM 13 THE COURT: Welding things together?

09:21AM 14 THE DEFENDANT: Yes, sir.

09:21AM 15 THE COURT: Okay. Are you married?

09:21AM 16 THE DEFENDANT: No, sir.

09:21AM 17 THE COURT: Do you have any children?

09:21AM 18 THE DEFENDANT: No, sir.

09:21AM 19 THE COURT: What kind of hobbies do you have? What  
09:21AM 20 do you like to do?

09:21AM 21 THE DEFENDANT: I'm an auto mechanic, both my hobby  
09:21AM 22 and now currently by trade at my current job. I had  
09:21AM 23 commercial fish in the past and sport fish for hobbies.

09:21AM 24 THE COURT: What kind of sport fishing do you do?

09:21AM 25 THE DEFENDANT: Mostly pole fishing.

09:21AM 1 THE COURT: Pole fishing. What is that?

09:21AM 2 THE DEFENDANT: Just with a fishing pole.

09:22AM 3 THE COURT: What other kind of fishing can you do?

09:22AM 4 THE DEFENDANT: Well, in -- primarily, the primary

09:22AM 5 fish in Alaska is salmon.

09:22AM 6 THE COURT: Salmon?

09:22AM 7 THE DEFENDANT: Yes, sir. And usually we target the

09:22AM 8 red salmon and occasionally silvers, depending on what area.

09:22AM 9 THE COURT: Ever hear of Bristol Bay?

09:22AM 10 THE DEFENDANT: Yes, Your Honor. I have many friends

09:22AM 11 who fish in Bristol Bay.

09:22AM 12 THE COURT: What do they catch there?

09:22AM 13 THE DEFENDANT: They catch the various types of

09:22AM 14 salmon, targeting the red salmon primarily, but there's some

09:22AM 15 by-catch as well with other special species of salmon.

09:22AM 16 THE COURT: Is that salmon you catch like in

09:22AM 17 Lake Erie or Lake Ontario?

09:22AM 18 THE DEFENDANT: There's a difference. They're salt

09:22AM 19 water salmon and they spend most of their life at sea,

09:22AM 20 anywhere from a two to a five-year life span when they return.

09:22AM 21 Usually, the longer the life span of the fish and the further

09:22AM 22 they have to swim, the greater quality. And fresh water

09:22AM 23 salmon is landlocked. It's different quality of meat and a

09:22AM 24 different texture as well.

09:22AM 25 THE COURT: Does he seem to know what he's talking



09:22AM 1 about?

09:22AM 2 MR. XIANG: He sent us some salmon, right? Or was  
09:23AM 3 it --

09:23AM 4 THE COURT: He sent some salmon to whom?

09:23AM 5 MR. XIANG: To the undercover agent.

09:23AM 6 THE COURT: What kind of salmon?

09:23AM 7 MR. XIANG: We didn't eat it.

09:23AM 8 THE COURT: All right.

09:23AM 9 MS. COVERT: That was a waste.

09:23AM 10 THE COURT: Are you seeing a doctor for any reason,  
09:23AM 11 sir?

09:23AM 12 THE DEFENDANT: I have recently been seeing a doctor.  
09:23AM 13 My employment caused some issues in my health. I was working  
09:23AM 14 as a fueler for a fuel -- home heating fuel delivery company.  
09:23AM 15 And I did not know, at the time, that I had a blood allergen  
09:23AM 16 to petroleum. I had to go through a detox program due to high  
09:23AM 17 escalated levels of benzine in my blood and I had liver  
09:23AM 18 inflammation. I recently finished that detox program and my  
09:23AM 19 blood count is clean.

09:23AM 20 THE COURT: Are you seeing a psychiatrist?

09:23AM 21 THE DEFENDANT: No, sir.

09:23AM 22 THE COURT: Have you ever been hospitalized or  
09:23AM 23 treated for narcotic addiction?

09:23AM 24 THE DEFENDANT: No, sir.

09:23AM 25 THE COURT: Are you today under the influence of any

09:24AM 1 drug, medicine or alcohol?

09:24AM 2 THE DEFENDANT: No, sir.

09:24AM 3 THE COURT: Now, is anyone forcing you to plead  
09:24AM 4 guilty?

09:24AM 5 THE DEFENDANT: No, sir.

09:24AM 6 THE COURT: Anyone threaten you in any way?

09:24AM 7 THE DEFENDANT: No, sir.

09:24AM 8 THE COURT: Your willingness to plead guilty, you  
09:24AM 9 discussed with your attorney, she discussed it with the  
09:24AM 10 government. Based on those discussions, this plea agreement  
09:24AM 11 was prepared and that's how this all came about?

09:24AM 12 THE DEFENDANT: Yes, sir.

09:24AM 13 THE COURT: Now, do you understand the offense which  
09:24AM 14 you are pleading guilty to is a serious offense and if  
09:24AM 15 accepted by the Court, there will be no appeal, as long as the  
09:24AM 16 sentence is consistent with the terms and conditions of the  
09:24AM 17 plea agreement? Do you understand that?

09:24AM 18 THE DEFENDANT: Yes, sir.

09:24AM 19 THE COURT: Being found guilty of this offense may  
09:24AM 20 deprive you of certain rights. You may lose the right to hold  
09:24AM 21 public office, right to serve on a jury, right to possess a  
09:24AM 22 firearm, certain civil-service type jobs. Do you understand  
09:24AM 23 that?

09:24AM 24 THE DEFENDANT: Yes, sir.

09:24AM 25 THE COURT: Do you understand all the possible

09:24AM 1 consequences? We talked about paragraph 1. We talked about  
09:24AM 2 the guidelines. We talked about the possible fine, the cost,  
09:24AM 3 the mandatory special assessment of \$100. Do you understand  
09:24AM 4 all that?

09:24AM 5 THE DEFENDANT: Yes, sir.

09:24AM 6 THE COURT: Now, do you understand you have a right  
09:25AM 7 to plead not guilty and you have a right to persist in that  
09:25AM 8 plea of not guilty and you have a right to a fair trial in  
09:25AM 9 this courtroom where a jury of 12 people will decide whether  
09:25AM 10 you are guilty or not guilty?

09:25AM 11 First of all, I'd be the judge. And to the best of  
09:25AM 12 my ability, I would conduct a trial fairly and impartially. I  
09:25AM 13 have no interest in this case, other than to make sure that  
09:25AM 14 you and the government get a fair trial. In selecting that  
09:25AM 15 jury, we would have in the courtroom somewhere around maybe 50  
09:25AM 16 or 75 people; people who live in this area, live in this  
09:25AM 17 district.

09:25AM 18 You'd be in the courtroom. They'd be here. Your  
09:25AM 19 lawyer would be with you. All those prospective jurors would  
09:25AM 20 be put under oath to answer all my questions honestly and  
09:25AM 21 truthfully. If there were anyone in that group that would not  
09:25AM 22 be fair and impartial, that person would be removed. And  
09:25AM 23 you'd have input on that through your lawyer and say, hey,  
09:25AM 24 Judge, that guy's already made up his mind. And if I agree  
09:25AM 25 with you -- and there's no reason why I wouldn't if it made

09:25AM 1 sense -- that person would be gone. Also, you could remove up  
09:25AM 2 to 10 people for any reason you want, other than race or  
09:25AM 3 gender. You couldn't say well, I don't want any women on my  
09:25AM 4 jury or I don't want a particular race of people. You can't  
09:26AM 5 discriminate in that sense. Do you understand that?

09:26AM 6 THE DEFENDANT: Yes, Your Honor.

09:26AM 7 THE COURT: Ms. Covert would represent you. You'd  
09:26AM 8 have a right to hear and see all the witnesses and have her  
09:26AM 9 cross-examine the witnesses. And after the government's  
09:26AM 10 rested its case, you could put on a defense. You could  
09:26AM 11 subpoena witnesses or any records that are relevant to the  
09:26AM 12 trial issues.

09:26AM 13 But you don't have to do anything. You're presumed  
09:26AM 14 not guilty. You don't have to prove a thing. You can sit  
09:26AM 15 there and say, you prove it government. I'm going to rely on  
09:26AM 16 the presumption of innocence, because you're presumed innocent  
09:26AM 17 of the charges. And the government has the burden of  
09:26AM 18 convincing all 12 jurors that you are guilty beyond a  
09:26AM 19 reasonable doubt before you can be found guilty. Do you  
09:26AM 20 understand that, sir?

09:26AM 21 THE DEFENDANT: I understand this.

09:26AM 22 THE COURT: By entering a plea of guilty, if accepted  
09:26AM 23 by the Court, there will be no trial. You'll have waived your  
09:26AM 24 right to trial, as well as all the other rights we talked  
09:26AM 25 about here. Do you understand that?

09:26AM 1 THE DEFENDANT: Yes, Your Honor.

09:26AM 2 THE COURT: Any questions, sir?

09:26AM 3 THE DEFENDANT: No, sir.

09:26AM 4 THE COURT: Counsel, is there any reason why I should  
09:26AM 5 not accept the plea?

09:26AM 6 MR. XIANG: No, Your Honor.

09:26AM 7 MS. COVERT: No, Your Honor.

09:26AM 8 THE COURT: You're both satisfied I met all the  
09:26AM 9 requirements of Rule 11?

09:26AM 10 MS. COVERT: Yes, Your Honor.

09:26AM 11 THE COURT: How do you plead to Count 3, sir; guilty  
09:26AM 12 or not guilty?

09:26AM 13 THE DEFENDANT: I plead guilty.

09:26AM 14 THE COURT: It is the finding of the Court that the  
15 defendant is fully competent and capable of entering an  
16 informed plea. His plea of guilty is a knowing and voluntary  
17 plea, supported by an independent basis of fact, containing  
18 each of the essential elements of the offense charged. This  
19 plea is therefore accepted by the Court. He is now judged  
09:27AM 20 guilty of Count 3.

09:27AM 21 Sentencing will be scheduled for November 22nd at  
09:27AM 22 1 o'clock. A written pre-sentence report will be prepared by  
09:27AM 23 the probation officer to assist the Court in imposing  
09:27AM 24 sentence. You'll be afforded an opportunity to meet with the  
09:27AM 25 probation officer to provide information in that report. Your

09:27AM 1 attorney should be present. You'll receive a copy of the  
09:27AM 2 report, as well as your attorney. You'll be able to file any  
09:27AM 3 additional information or any motions or objections that are  
09:27AM 4 consistent with the terms and conditions of the plea agreement  
09:27AM 5 and both you and your attorney will have an opportunity to  
09:27AM 6 address the Court at the time of sentencing and say anything  
09:27AM 7 you wish to say in mitigation of the sentence. The schedule  
09:27AM 8 for filing all papers will be as follows.

09:27AM 9 THE CLERK: The initial presentence report shall be  
09:27AM 10 due October 8th. Statements of the parties with respect to  
09:28AM 11 sentencing factors, objections, if any, and motions, if any,  
09:28AM 12 shall be due November 1st. Responses to objections or motions  
09:28AM 13 shall be due November 8th. Sentencing memorandum or character  
09:28AM 14 letters in support of the defendant shall be due November 8th.  
09:28AM 15 Motion to adjourn sentencing shall be due November 12th. The  
09:28AM 16 final presentence report shall be due November 15th and the  
09:28AM 17 government's response to legal arguments in defendant's  
09:28AM 18 sentencing memorandum shall be due November 15th.

09:28AM 19 THE COURT: Are you going to meet with the probation  
09:28AM 20 officer today?

09:28AM 21 MS. COVERT: Today, Your Honor.

09:28AM 22 THE COURT: All right. If you have any problems, let  
09:28AM 23 me know.

09:28AM 24 MS. COVERT: Thank you Judge.

09:28AM 25 THE COURT: Definitely should do it here. All right.

09:40AM

1 (Proceedings adjourned at 9:40 a.m.)  
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I certify that the foregoing is a  
correct transcription of the proceedings  
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Court Reporter,